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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Ex Parte Comments: Two Originals filed in the following docket:

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98)

Dear Madam Secretary,

This letter is intended to comply with the FCC's rules on *ex parte* communications. The National Association of Regulatory Utility Commissioners ("NARUC") respectfully requests the FCC grant any waivers needed to allow this filing out-of-time.

I am NARUC's Assistant General Counsel. During NARUC's 1999 Winter Meetings in Washington, D.C., I discussed possible FCC responses to various aspects of the Supreme Court's January 25, 1999 decision in the *Iowa Utilities Board* case with the following FCC representatives:

- On February 18 & 19, I both spoke directly to and left voice mail with Common Carrier Bureau Chief Larry Strickling, FCC General Counsel Chris Wright, Commissioner Tristani's CCB Advisor Paul Gallant, Chairman Kennard's CCB Advisor Tom Power, Commissioner Powell's CCB Advisor Kyle Dixon, and Commissioner Furchtgott-Roth's CCB Advisor Kevin Martin.
- During the remainder of the NARUC meetings, February 20-24, at various times, I had additional discussions involving Mr. Strickling, Mr. Gallant, Ms. Carol Mattingly, Mr. Martin, Mr. Wright, Ms. Kathy Brown (Chairman Kennard's Chief of Staff), and Commissioner Ness on the same issues.
- Subsequently, last Thursday, February 25, 1999, I met with James Casserly of Commissioner Ness's office and Mr. Martin and discussed the same issues.
- Finally, on Friday, February 26, 1999, I met with Commissioner Ness and Mr. Casserly, and, later with Commissioner Tristani and Mr. Gallant.

The recent Supreme Court decision in *Iowa* upheld a number of FCC rules that had been first stayed and later vacated by the 8th Circuit. During these conversations, I suggested a range of options for how the FCC might approach the following three of those rules: (1) the FCC "TELRIC" pricing methodology, (2) the now-past FCC February 8, 1999 deadline for implementing dialing parity, and (3) the FCC requirement for a minimum of three geographically de-averaged pricing zones. *These rules will become effective when the Supreme Court transfers its ruling back to the 8th Circuit sometime during the next two weeks:*

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Discussions during the early part of NARUC's meeting focused on possible components of a NARUC policy resolution based primarily on earlier conference calls with NARUC's member States.

Discussions after the passage of the attached NARUC resolution on February 24, 1999 focused on the following NARUC specific requests that the FCC:

- *Expediently establish a new deadline for States that have not implemented dialing parity;*
- *Clarify that States that implement dialing parity have the authority to condition customer default to the incumbent local service provider on the requirement that customers have a reasonable opportunity to change among all service providers;*
- *Expediently stay its minimum three-zone rule pending further evaluation in the context of the FCC and State implementation of the Act and related issues for those States that have not taken such action.*

Generically, I pointed out that the Supreme Court has presented the FCC with a unique opportunity. When the FCC first drafted these rules, it was acting, as regulators frequently do, with no empirical information on the impact of such regulations. Since the rules were stayed in 1996, the State "laboratories" have generated a significant body of information about the real world impact of, in some instances, the precise implementation of the FCC's rules re: TELRIC and deaveraging, and in other circumstances, variations of those rules. Now the FCC has the opportunity, if it chooses, to re-examine certain of its initial policy calls in the light of actual empirical data. For example, New York, generally acknowledged as one of the most pro-competitive jurisdictions in the country, has only required 2 deaveraged zones – not the minimum three required by the FCC's rules.

With respect to the FCC's TELRIC methodology, I suggested the following:

- The FCC should do everything possible to minimize the prospects for disruption via appeals/collateral attacks upon the myriad of existing State commission pricing orders and related-approved arbitrations that, either specifically comply with the precise text of the original August 1996 order, or are otherwise in substantial compliance with the FCC's rules;
- The TELRIC pricing methodology was originally implemented because there was a concern that States might mis-interpret the statute's cost standards;
- As the FCC itself declared nearly two years ago, "virtually every state in the union has " in fact "adopted [the FCC's pricing] policies." See Reed Hundt, FCC Chairman, remarks to the Chamber of Commerce, Washington, D.C. (May 29, 1997). Indeed, some State pricing methodologies have already been approved by District Courts as being in compliance with the Act's goals;
- The overwhelming majority of NARUC members have either specifically complied with the precise terms of the TELRIC pricing methodology or used a related forward-looking pricing methodology which is in "substantial compliance" with the FCC's methodology; and

- Although not adopted as a NARUC position, many States have suggested that the FCC point out that the majority of States appear to have substantially complied with the FCC's pricing methodology and consider a stay of the "precise application" of the TELRIC methodology – at the very least, with respect to existing agreements and completed State pricing dockets.

With respect to toll dialing parity, I suggested that the FCC should:

- Minimize the prospects of disruption and attendant customer confusion though collateral attacks on State commission orders implementing intraLATA dialing parity, in the 39 jurisdictions that have done so; and
- For the 11 jurisdictions that have not acted, establish a new deadline with a reasonable time for those States to bring their ILECs into compliance with the FCC's rules.

With respect to the FCC rule requiring a minimum of 3 geographically de-averaged pricing zones, I suggested the following:

- With the benefits of the last three years of post-Act experience, the FCC may wish to consider re-evaluating the requirement for a minimum of 3 geographically de-averaged pricing zones;
- Whatever, the FCC's final policy choice on the number of needed zones, the Commission should consider staying the efficacy of that rule until related State and Federal proceedings are fully implemented;
- Should the FCC determine not to establish an interim indefinite stay of these rules, it should, when considering the length of any stay, consider that
 - Many States lack the staff and monetary resources of an agency the size of the FCC;
 - In addition to routine State and TelAct related duties, the telecom staff of those States will be required to accelerate related proceedings dealing with universal service and retail rate restructuring at the same time they are opening proceedings to implement de-averaged zones;
 - Some of those States have suggested informally that they are unsure how to conclude their intrastate universal service proceedings until they see how the FCC plans on finally implementing the interstate universal service high cost program.

If you have any questions about this correspondence, please do not hesitate to contact me at 202.898.2207 or, via e-mail at jramsay@naruc.org. I have e-mailed copies of this letter to each FCC representative referenced above.

Sincerely,


James Bradford Ramsay
NARUC Assistant General Counsel

**Resolution Concerning Cooperative Federalism in the Wake of the January 25, 1999
Iowa Utilities Board vs. AT&T Supreme Court Decision**

WHEREAS, A critical and key component for successful implementation of the Telecommunications Act of 1996 (Act) has always been significant coordination and cooperation between State and U.S. territorial utility (State) commissions and the Federal Communications Commission (FCC); and

WHEREAS, Since passage of the Act, the State Commissions and U.S. Territories and the FCC have worked together on a broad range of issues, and have benefited from one another's differing perspectives; and

WHEREAS, On January 25, 1999, several significant FCC rules were specifically upheld, including those requiring implementation of dialing parity, a minimum of three geographically de-averaged pricing zones, and

WHEREAS, The Supreme Court also specifically upheld the FCC's authority to impose pricing guidelines binding on the States in the context of Section 251-2 arbitrations; but remanded the substantive validity of those rules back to the Eight Circuit for a decision on the merits; and

WHEREAS, This decision, if anything, increases the need for cooperative FCC and State commission action to

- Minimize the prospects for disruption via appeals/collateral attacks upon the myriad of existing State commission pricing orders and related-approved arbitrations that, either specifically comply with the precise text of the original August 1996 order, or are otherwise in substantial compliance with the FCC's rules – orders, that have, in many instances, already been approved by Federal District Courts as being in compliance with the Act's goals, and
- Minimize the prospects of disruption and attendant customer confusion though collateral attacks on State commission orders implementing intraLATA dialing parity, in the 39 jurisdictions that have done so, and provide a reasonable time for the 11 jurisdictions that have not to bring their State's ILECs into compliance with the FCC's rules;
- With the benefits of the last three years of post-Act experience, re-evaluate the requirement for a minimum of 3 geographically de-averaged pricing zones, at a minimum, staying the efficacy of that rule until related State and Federal universal service programs are fully implemented;
- Continue to maximize the benefit of State-level diversity and innovation from Congress's cooperative federalism scheme; now therefore be it

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), assembled at its 1999 Winter Meeting in Washington, D.C. congratulate the FCC on its recent victory in the Supreme Court and applaud the outreach from every level of the agency to the States seeking input on how to manage the recent re-vitalization of rules that have be stayed for almost three years; and be it further

RESOLVED, That the NARUC opposes any legal challenge to forward-looking cost methodologies; and be it further

RESOLVED, With respect to toll dialing parity, the FCC should

- Expedientiously establish a new deadline for States that have not implemented dialing parity; and
- Clarify that States that implement dialing parity have the authority to condition customer default to the incumbent local service provider on the requirement that customers have a reasonable opportunity to change among all service providers; and be it further

RESOLVED, That the FCC should expedientiously stay its minimum three zone rule pending further evaluation in the context of the FCC and State implementation of the Act and related issues for those States that have not taken such action; and be it further

RESOLVED, That the NARUC General Counsel be directed to take any action deemed necessary to carry out the intent of this resolution.

Sponsored by the Committee on Telecommunications
Adopted February 24, 1999